

§ 81.104

§ 81.104 Final decisions.

(a) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 20-day period specified in § 81.103, such decision shall become the final decision of the Department, and shall constitute “final agency action” within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 81.106.

(b) Where the hearing is conducted by a hearing examiner who makes a recommended decision, or upon the filing of exceptions to a hearing examiner’s initial decision, the reviewing authority shall review the recommended or initial decision and shall issue its own decision thereon, which shall become the final decision of the Department, and shall constitute “final agency action” within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 81.106.

(c) All final decisions shall be promptly served on all parties, and amici, if any.

§ 81.105 Oral argument to the reviewing authority.

(a) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, he shall make such request in writing. The reviewing authority may grant or deny such requests in its discretion. If granted, it will serve notice of oral argument on all parties. The notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the Department hearing clerk not later than 7 days before the date set for oral argument.

(b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidations of appearances at oral argument by parties taking the same side will permit the parties’ interests to be

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presented more effectively in the time allotted.

(c) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Department hearing clerk at least 7 days before the argument.

§ 81.106 Review by the Secretary.

Within 20 days after an initial decision becomes a final decision pursuant to § 81.104(a) or within 20 days of the mailing of a final decision referred to in § 81.104(b), as the case may be, a party may request the Secretary to review the final decision. The Secretary may grant or deny such request, in whole or in part, or serve notice of his intent to review the decision in whole or in part upon his own motion. If the Secretary grants the requested review, or if he serves notice of intent to review upon his own motion, each party to the decision shall have 20 days following notice of the Secretary’s proposed action within which to file exceptions to the decision and supporting briefs and memoranda, or briefs and memoranda in support of the decision. Failure of a party to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

§ 81.107 Service on amici curiae.

All briefs, exceptions, memoranda, requests, and decisions referred to in this Subpart J shall be served upon amici curiae at the same times and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 81.71 shall be served on amici.

Subpart K—Judicial Standards of Practice

§ 81.111 Conduct.

Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations